

**BEFORE THE
MISSOURI BOARD OF PHARMACY
STATE OF MISSOURI**

IN RE:

CHAD L. WESTBAY

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Case #2009-003270

**ORDER OF THE MISSOURI BOARD OF PHARMACY
ISSUING CHAD L. WESTBAY A PHARMACIST LICENSE
SUBJECT TO PROBATION**

Comes now the Missouri Board of Pharmacy ("Board") and issues its ORDER granting a PROBATED pharmacist license, license number 2009030094, to Chad L. Westbay, ("Westbay") pursuant to the provisions of Section 324.038, RSMo. As set forth in Section 324.038, RSMo, Westbay may submit a written request for a hearing to the Administrative Hearing Commission seeking review of the Board's decision to issue a probated license to Westbay. Such written request must be submitted to the Administrative Hearing Commission within thirty (30) days of issuance of this Order. The written request should be addressed to the Administrative Hearing Commission, P.O. Box 1557, Truman Building Room 640, Jefferson City, MO 65102-1557. If no written request for review is received by the Administrative Hearing Commission within the thirty (30) day period, the right to seek review of the Board's decision shall be waived.

The disciplinary period shall become effective immediately upon issuance of Westbay's license as a pharmacist. Should Westbay file a written request for review of this Order, the terms and conditions of the Order shall remain in force and effect unless and/or until such time as the Administrative Hearing Commission issues an order contrary to this Order.

FINDINGS OF FACT

1. The Missouri Board of Pharmacy (hereinafter "Board") is an agency of the State of Missouri created and established pursuant to Section 338.110, RSMo, for the purpose of executing and enforcing provisions of Chapter 338, RSMo.

2. Chad Westbay filed an application to take the examinations to become licensed as a pharmacist with the Board on April 23, 2009.

3. On that application, Westbay stated that his pharmacist license had been disciplined by Missouri and he had violated the drug laws or rules and regulations of Missouri, another state, or the United States. The Board licensed Westbay originally in 1998 and revoked Mr. Westbay's license as a pharmacist on September 3, 2003, and ordered that he could not reapply for seven years from April 11, 2002. Mr. Westbay filed this application more than seven years after April 11, 2002.

4. Also on the application, Westbay stated that in the last ten years he used drugs, controlled substances, or alcoholic beverages to the extent that such use impaired his ability to perform the work of a pharmacist. He also stated on that application that he had been or now is addicted to drugs, controlled substances, or alcohol.

5. In the fall of 2006, Westbay attended an outpatient treatment program for substance abuse and asserts he has been clean and sober since completion of the program. He also claims he remains active in Alcoholic Anonymous and attends a Caduceus support group of recovering professionals on a weekly basis.

6. On September 5, 2009, Westbay took the Multistate Pharmacy Jurisprudence Examination (MPJE) necessary to be licensed as a pharmacist and received a passing score on that examination.

7. On September 24, 2009, Westbay took the North American Pharmacist Licensure Examination (NAPLEX) necessary to be licensed as a pharmacist and received a passing score on that examination.

8. Based on information received by the Board, pursuant to Section 338.055 RSMo, the Board concluded Westbay engaged in conduct which would be grounds for disciplinary action by the Board if Westbay were licensed by the Board, and grounds for denial of Westbay's application for licensure filed with the Board.

9. Pursuant to the provisions of Section 324.038, RSMo, the Board hereby issues Westbay license number 2009030094 to Westbay in lieu of denial of Westbay's request for a license to practice pharmacy in Missouri. License number 2009030094 is issued subject to the terms and conditions set forth herein below.

CONCLUSIONS OF LAW

10. Westbay's conduct as alleged above is cause for the Board to deny Westbay a license to practice pharmacy pursuant to Section 338.055.1 and .2, RSMo, which states in pertinent parts:

1. The board may refuse to issue any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.
2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

(8) Denial of licensure to an applicant or disciplinary action against an applicant or the holder of a license or other right to practice any profession regulated by this chapter granted by another state, territory, federal agency, or country whether or not voluntarily agreed to by the licensee or applicant, including, but not limited to, surrender of the license upon grounds for which denial or discipline is authorized in this state;

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government;

(17) Personal use or consumption of any controlled substance unless it is prescribed, dispensed, or administered by a health care provider who is authorized by law to do so.

11. Section 324.038, RSMo, provides in pertinent part:

1. Whenever a board within the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

12. The Board hereby issues this ORDER in lieu of denial of Westbay's request for a Missouri pharmacist license pursuant to Section 324.038, RSMo.

ORDER

Based on the foregoing and in lieu of denying Westbay a pharmacist license, the Board issues Chad L. Westbay a license subject to PROBATION for five (5) years (hereinafter "disciplinary period"). The terms of discipline shall be:

1. Westbay shall keep the Board apprised of his current home and work addresses and telephone numbers. If at any time Westbay is employed by a temporary employment agency or maintains employment that requires frequent daily or weekly changes of work locations he must provide the Board a list of locations worked if requested by the Board or Board's representative.

2. Westbay shall pay all required fees for licensing to the Board and shall renew his license prior to October 31 of each licensing year.

3. Westbay shall comply with all provisions of Chapter 338, Chapter 195, and all applicable federal and state drug laws, rules and regulations and with all federal and state criminal laws. "State" here includes the State of Missouri and all other states and territories of the United States.

4. Westbay shall make himself available for personal interviews to be conducted by a member of the Board or the Board of Pharmacy staff. Said meetings will be at the Board's discretion and may occur periodically during the disciplinary period. Westbay will be notified and given sufficient time to arrange these meetings.

5. If, after disciplinary sanctions have been imposed, Westbay ceases to keep his Missouri license current or fails to keep the Board advised of his current place of employment and residence, such periods shall not be deemed or taken as any part of the time of discipline so imposed.

6. Westbay shall provide all current and future pharmacy and drug distributor employers and pharmacist/manager-in-charges a copy of this disciplinary order within five (5) business days of the date of this Order or the beginning date of each employment. If at any time Westbay is employed by a temporary employment agency he must provide each pharmacy and drug distributor employer and

pharmacist/manager-in-charge a copy of this disciplinary order prior to or at the time of any scheduled work assignments.

7. Westbay shall not serve as a preceptor for interns.

8. Respondent is not eligible to administer drugs or vaccines as allowed in 20 CSR 2220-6.040 and 20 CSR 2220-6.050.

9. If applicable, Westbay shall notify any employer of the employer's need to apply for and receive the necessary state (misdemeanor/felony) and federal (felony) waivers from the Bureau of Narcotics and Dangerous Drugs and the Drug Enforcement Administration in order to be employed within a facility that maintains state and federal registrations for the purpose of storing, distributing or dispensing controlled substances.

10. Westbay shall report to the Board, on a preprinted form supplied by the Board office, once every six months (due by each January 1 and July 1), beginning with whichever date occurs first after this Order becomes effective, stating truthfully whether or not he has complied with all terms and conditions of his disciplinary order.

11. Westbay shall participate in the Board's random drug testing/urinalysis program administered by FirstLab, the Board's approved drug testing/urinalysis vendor. Licensee shall enroll in FirstLab's Professional Health Monitoring Program as directed by the Board or the Board's designated representative. Westbay shall comply with all requirements imposed by FirstLab for the drug testing/urinalysis program, including, but not limited to, any drug test/urinalysis requirements, any testing/urinalysis scheduling requirements, any Westbay reporting or telephone contact requirements designated by FirstLab and any requirements for purchasing/maintaining chain of custody (COC) forms or other required program documents/materials.

12. Westbay shall undergo periodic drug testing/urinalysis as requested by the Board or FirstLab, at Westbay's cost. The timing and/or scheduling for testing is within the Board's sole discretion.

13. If the Board's approved drug testing/urinalysis vendor changes, Westbay shall participate in and comply with any drug testing/urinalysis requirements requested by the Board.

14. Westbay shall complete an alcohol/drug abuse counseling and treatment program approved by the Board. Said program shall meet the requirements set forth in 20 CSR 2220-2.170 (6).

a. Documentation required for counselor/program approval must be submitted to the Board office and Westbay's counselor/program must receive Board approval within three (3) months after the date of this Order. Any unexpected or requested change in treatment counselor/program shall be submitted to the Board within ten (10) days of the change; and the program approval process must again be completed.

b. Westbay shall, within six (6) weeks of the date of this Order, undergo an evaluation for chemical dependency performed by a licensed or certified chemical dependency professional. Westbay shall cause the results of the evaluation to be mailed directly to the Missouri Board of Pharmacy, P.O. Box 625, Jefferson City, Missouri 65102 within ten (10) days after the evaluation has been completed. Each evaluation report shall include the licensee's present state of impairment; a description of the tests performed and the results; discussion of relevant clinical interview findings/interpretations; specification of DSM IV diagnosis/es; appropriate treatment recommendations/plan; the beginning date of treatment; and an assessment for future prospects for recovery. If there is no diagnosis requiring treatment, this should be reported in the evaluation. Westbay shall follow any treatment recommendations made by that chemical dependency professional.

c. Westbay shall provide a copy of this Order to all chemical dependency professionals involved in Westbay's treatment, and all medical professionals issuing/renewing a controlled substance, carisoprodol, nalbuphine, or tramadol prescription to Westbay. Said disclosure shall be made before the evaluation required in Paragraph B, before the issuance of any new prescriptions and, in the case of renewed/refilled prescriptions, disclosure shall be made within ten (10) days of the date of this Order. Westbay shall simultaneously report to the Board office that said disclosure has taken place.

d. Westbay shall execute a medical release effective for the entire disciplinary period authorizing any chemical dependency professional or medical professional to release records and/or communicate with the Board, or its representative, regarding Westbay's treatment. Westbay shall not take any action to cancel this release. Westbay shall take all steps necessary to continue the release in effect and shall provide a new release when requested.

e. Westbay shall cause a report of ongoing treatment evaluation to be submitted from the Board-approved chemical dependency professional to the Board office on the schedule prescribed by 20 CSR 2220-2.170(6)(E). The report shall be completed by the treating professional within four weeks prior to the date it is due. The report shall include an evaluation of Westbay's current progress and status related to the treatment recommendations/plan, and Westbay's current prognosis as well as revised treatment recommendations/plan.

f. Westbay shall submit evidence of weekly (or counselor recommended) attendance at Alcoholics Anonymous, Narcotics Anonymous, or other support group meetings to the Board once every six (6) months throughout the disciplinary period. The documentation shall include the date, time, and place of each meeting and shall bear a signature or abbreviated signature of another person verifying attendance.

g. If the treatment of Westbay is successfully completed at any time during the disciplinary period, Westbay shall cause the Board-approved chemical dependency professional to submit a report of final evaluation/summary.

h. Westbay shall abstain completely from the use or consumption of alcohol in any form, including over-the-counter medications and mouthwashes. The presence of any alcohol or alcohol metabolite whatsoever in a biological fluid sample shall constitute a violation of discipline.

i. Westbay shall provide the Board office, within 10 days of the date of this Order, a copy of all controlled substance prescriptions, dispensed or to be dispensed, in Westbay's possession on the beginning date of discipline. The following information shall be provided: the prescription number, drug name, strength, dosage instructions, prescriber's name and address, the name and address of the pharmacy where the prescription was dispensed, date dispensed, number of refills available, and any other requested information concerning the prescription.

j. Westbay shall abstain completely from the personal use or possession of any controlled substance or other drug for which a prescription is required unless use of the drug has been prescribed by a person licensed to prescribe such drug and with whom Westbay has a bona fide relationship as a patient. Upon request, Westbay shall execute a medical release authorizing the medical professional that prescribed the controlled substance or other drug for which a prescription is required to release records

and/or communicate with the Board, or its representative, regarding Westbay's treatment. The presence of any controlled substance whatsoever in a biological fluid sample for which Westbay does not hold a valid prescription shall constitute a violation of discipline. Westbay shall provide the Board with a copy of each prescription received, controlled or non-controlled, within five (5) days of Westbay's receipt of the prescription.

k. Westbay shall inform any professional preparing a prescription for Westbay that he is chemically dependent.

15. When the Well-being Committee created by Section 338.380, RSMo, is established, fully functional, and fully operational, Westbay is required to become a participant in the Committee's program for the remainder of the disciplinary period. The Board will notify Westbay when this occurs and Westbay will bear all the costs of the program.

16. Westbay shall not serve as a pharmacist-in-charge or in a supervisory capacity of the professional practice of other pharmacists without prior approval of the Board.

17. Westbay must complete 1000 hours of supervised practice before being allowed to work independently as a pharmacist. The hours must be supervised by a Missouri-licensed pharmacist whose license is current and not under discipline with the Board. Westbay must submit to the Board documentation signed by the supervising pharmacist attesting to the completion of the required hours. The documentation must be submitted to the Board prior to Westbay working independently as a pharmacist and shall contain detailed dates and times. The 1000 hours must be obtained before the final 120 days of the probationary period.

18. Westbay's failure to comply with any condition of discipline set forth herein constitutes a violation of this disciplinary Order.

19. The Board of Pharmacy will maintain this Order as an open record of the Board as provided in Chapters 338, 324, 610, RSMo.

Upon the expiration of the disciplinary period, Westbay's license as a pharmacist shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that Westbay has violated any term or condition of this Order, the Board may, in its discretion, after an evidentiary hearing,

vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Westbay's license.

No order shall be entered by the Board pursuant to the preceding paragraph of this Order without notice and an opportunity for a hearing before the Board in accordance with provisions of Chapter 536, RSMo.

If the Board determines that Westbay has violated a term or condition of this Order, which violation would be actionable in a proceeding before the Administrative Hearing Commission or the Circuit Court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning that violation.

SO ORDERED this 2nd day of October, 2009

MISSOURI BOARD OF PHARMACY



KIMBERLY A. GRINSTON
EXECUTIVE DIRECTOR